

TITLE 10. CALIFORNIA DEPARTMENT OF CORPORATIONS

NOTICE IS HEREBY GIVEN

The Commissioner of Corporations ("Commissioner") proposes to amend regulations under the CORPORATE SECURITIES LAW OF 1968 relating to broker-dealer applications, amendments, notices, and fees required to be filed with the Commissioner. The Commissioner proposes to amend sections 260.211 and 260.211.1 of the California Code of Regulations.

PUBLIC HEARING

No public hearing is scheduled. Any interested person or his or her duly authorized representative may request, in writing, a public hearing pursuant to Section 11346.8(a) of the Government Code. The request for hearing must be received by the Department of Corporations' ("Department") contact person designated below no later than 15 days prior to the close of the written comment period.

WRITTEN COMMENT PERIOD

Any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the Department of Corporations, addressed to Kathy Womack, Office of Law and Legislation, Department of Corporations, 1515 K Street, Suite 200, Sacramento, CA 95814-4052, no later than 5:00 p.m., April 2, 2002. Written comments may also be sent to Kathy Womack (1) via electronic mail at regulations@corp.ca.gov or (2) via fax (916) 322-5875.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Under the Corporate Securities Law of 1968 ("CSL"), the Commissioner is responsible for the regulation of certain broker-dealers and agents of broker-dealers. Pursuant to this authority, broker-dealers must obtain a license from the Commissioner, which includes providing an application and various additional documents and fees to the Commissioner. The Commissioner proposes to amend the rules outlining the procedures for applications and other filings by broker-dealers and agents to allow all applications, amendments, and fees to be filed directly with the Central Registration Depository ("CRD").

While most broker-dealers have been filing documents with CRD for years, the Department has never accepted these filings through CRD, and has required applicants to send either a physical copy of Form BD (the national, uniform application form for broker-dealers) or the Department's "Application for License by Notification" and specified supporting documents to the Department. The proposed amendments to Sections 260.211 and 260.211.1 set forth new procedures for broker-dealers filing with the Department through CRD, and implement the provisions of AB 1048 (Frommer-Chap. 264, Stats. 2001).

Section 260.211: The proposed amendments to Section 260.211 amend the procedures for applicants neither filing through CRD nor filing by notification, and set forth new procedures for applicants filing with the Department entirely through CRD. Applicants not filing through CRD will no longer be required to amend the Form BD questions related to arrest records.

The proposed amendments to §260.211 also:

- Clarify that certain additional filings related to agents of broker-dealers are necessary for all applicants whose agent records are not on file with CRD, in addition to applicants not registered under the Securities Exchange Act of 1934;
- Remove the provisions that set forth procedures for broker-dealers who previously relied upon Section 25205 of the Corporations Code for an exemption from the licensure requirement as an investment adviser;
- Set forth procedures for applicants filing through CRD;
- Provide that the Commissioner may require additional documents to be filed directly with the Commissioner, and may request additional documentation or detail pertaining to Form BD;
- Provide that the filing is complete when the Commissioner approves the application and the approval is received through CRD;
- Set forth procedures in the event of a succession;
- Set forth provisions for the annual assessment of broker-dealers; and
- Set forth filing procedures for changes to a broker-dealer's ownership, control, or business operations.

Section 260.211.1: Section 260.211.1 sets forth the application for license by notification pursuant to Section 25211(b) of the Corporations Code. The proposed amendments to Section 260.211.1 remove the application instructions for broker-dealers who also engage in business as an investment adviser.

The proposed amendments further disqualify the National Association of Securities Dealers, Inc. ("NASD") and the Pacific Exchange, Inc. (referred to as the Pacific Stock Exchange in Corporations Code Section 25211) from the provisions of subdivision (b) of Section 25211 of the Corporations Code (i.e., licensure by notification), pursuant to the authority provided by that section that permits the Commissioner to disqualify a self-regulatory organization by rule from the licensure by notification procedures.

The proposed amendments to Section 260.211.1 also add a provision to the application for license by notification to require broker-dealers who are sole proprietors to include a Statement of Citizenship, Alienage, and Immigration Status Form pursuant to Section 250.31 of the rules.

AUTHORITY

Sections 25210, 25211, 25241, 25610 and 25612.5, Corporations Code.

REFERENCE

Sections 25210, 25211, 25241, 25608 and 25612.5, Corporations Code.

AVAILABILITY OF MODIFIED TEXT

The text of any modified regulation, unless the modification is only non-substantial or solely

grammatical in nature, will be made available to the public at least 15 days prior to the date the Department adopts the regulation. A request for a copy of any modified regulation should be addressed to the contact person designated below. The Commissioner will accept written comments on the modified regulations for 15 days after the date on which they are made available. The Commissioner may thereafter adopt, amend or repeal the foregoing proposal substantially as set forth above without further notice.

AVAILABILITY OF INITIAL STATEMENT OF REASONS, TEXT OF PROPOSED REGULATIONS/INTERNET ACCESS

The express terms of the proposed action may be obtained upon request from any office of the Department. Request Document OP 05/01-B. An initial statement of reasons for the proposed action containing all the information upon which the proposal is based is available from the contact person designated below. Request Document OP 05/01-C. These documents are also available at the Department's Website www.corp.ca.gov. As required by the Administrative Procedure Act, the Office of Law and Legislation maintains the rulemaking file. The rulemaking file is available for public inspection at the Department of Corporations, Office of Law and Legislation, 1515 K Street, Suite 200, Sacramento, California.

AVAILABILITY OF THE FINAL STATEMENT OF REASONS

Upon its completion, the Final Statement of Reasons will be available and copies may be requested from the contact person named in this notice or may be accessed on the website listed above.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(13), the Department must determine that no reasonable alternative it considered or that has otherwise been identified and brought to the attention of the Department would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

FISCAL IMPACT

- Cost or Savings to any State Agency: None.
- Direct or Indirect Costs or Savings in Federal Funding to the State: None.
- Other nondiscretionary cost or savings are imposed on local agencies: None.

DETERMINATIONS

The Commissioner has made an initial determination that the proposed regulatory action:

- Does not have an effect on housing costs.
- Does not have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Does not impose a mandate on any local agency or school district or a mandate that is required to be reimbursed pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code.
- Does not significantly affect (1) the creation or elimination of jobs within the State of California; (2) the creation of new businesses or the elimination of existing businesses within the State of California; (3) the expansion of businesses currently doing business within the State of California.

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSON OR BUSINESS

The proposed regulatory action primarily allows broker-dealers who are already filing an application with NASD to use that same filing to file their application for licensure in California. It is anticipated that this change may save broker-dealers regulatory compliance costs. The Department of Corporations is not aware of any adverse cost impacts that a representative person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON SMALL BUSINESS

It has been determined that the adoption of these regulations will not affect small business. Under Government Code Section 11342.610(b)(1), a securities broker-dealer is not a small business.

CONTACT PERSON

Nonsubstantive inquiries concerning this action, such as requests for copies of the text of the proposed regulations or questions regarding timelines or rulemaking status, may be directed to Kathy Womack at (916) 322-3553. The backup contact person is Karen Fong at (916) 322-3553. Inquiries regarding the substance of the proposed regulation may be directed to Colleen E. Monahan, Corporations Counsel. Department of Corporations, 1515 K Street, Suite 200, Sacramento, California 95814-4052. (916) 323-7384.

Dated: January 18, 2002
Sacramento, California

TIMOTHY L. Le BAS
Assistant Commissioner and General Counsel
Office of Law and Legislation